REMARKS

Applicants respectfully request further examination and reconsideration in view of the arguments set forth fully below. Claims 1, 2, 4-14, 16-25 and 27-29 were previously pending in this Application. Within the Office Action, Claims 1, 2, 4-14, 16-25 and 27-29 have been rejected. Accordingly, Claims 1, 2, 4-14, 16-25 and 27-29 are now pending in the application.

Rejections Under 35 U.S.C. § 103

Within the Office Action, Claims 1, 2, 4, 14, 16-25 and 27-29 have been rejected under 35 U.S.C. § 103(a) as being unpatentable over United States Patent Application Publication No. 2002/0013852 to Janik ("Janik") in view of United States Patent Application Publication No. 2001/0021994 to Nash ("Nash"). The Applicants respectfully disagree.

Janik

Janik teaches a system for *optimizing wide area network bandwidth* when delivering Internet and digital content to a variety of thin clients. [Janik, Abstract; ¶ 0027]. The system provides user specified channels for moving content from the Internet and local storage device to the user, via a caching gateway and a local area network. Software residing on a personal computer, and/or in combination with a storage gateway provides content distribution, management, and interaction functions. [Janik, ¶ 0002]. The system automatically or under the control of the user sends the content to client devices for presentation to the end user. [Janik, ¶ 0027]. Janik comprises two sub-applications: a core module and a graphics user interface (GUI) module. [Janik, ¶ 0084]. Selections made by the user in the GUI, such as launching specific device content, are communicated to the core module where they are acted upon. [Janik, ¶¶ 0094, 0095]. The core provides such functions as streaming of content from the Internet to client devices, managing the local storage (cache) of content from the Internet, scheduling of time-based automation of accessing, caching, and streaming of content, and accessing and communicating with devices and the GUI. [Janik, ¶ 0098]. The system operates in three modes: (1) setup, (2) real-time user controlled content/data delivery, and (3) automatic content/data delivery. [Janik, ¶ 0129]. A scheduling function may be used to download content from a web server *to the local cache* based on an internal timer. Janik teaches that the client boots up and dials an Internet service provider to download content, and then shuts back down. [Janik, ¶¶ 0192, 0193]. However, Janik's scheduling function does not teach the application *prefetch*

buffers of the presently claimed invention. Janik does not teach *detecting a current display window* and *prefetching content in response to detecting the current display window.*

The methods and apparatus of the presently claimed invention "detects the content of the current display window." The current display window could display different pieces of music content from any one of several different genres. The current display window could represent content presently viewed or content that is selected by the user. [Present Specification, page 16, lines 17-23, page 19, lines 6-9]

Janik also does not teach prefetching at least one audio/visual content in response to the current display window, the preference and the use pattern for at least the same reason as explained above, Janik does not teach detecting the content of the current display window. Further, the "prefetching" as taught in Janik is merely time-base automation of providing content to a user and lacks the sophistication of the currently claimed invention that prefetches at least one audio/visual content in response to the current display window, the preference and the use pattern. Janik also does not teach detecting an activity.

Nash

Nash teaches a television system which enables broadcasters to target advertisements at viewers. [Nash, Abstract, Fig. 1, elements 100, 102]. Broadcasters utilize a television transmission apparatus to broadcast video, audio and data signals, the data signals comprising advertisement information to be transmitted to a user's receiver. [Nash ¶ 0005]. Advertising information comprises reviews of advertisers' products by a professional panel of critics, colleagues, friends, and others. [Nash ¶ 0006]. The reviews are used in conjunction with user information to *automatically select advertisements* for the user to view as a means of convincing the user to buy the advertiser's products. [Nash, ¶ 0008]. A processor in the receiver is used to decode the advertising information and, together with the user information, *determines which advertisements are to be transmitted to the user.* [Nash, ¶ 0020]. Nash teaches a broadcast system. Broadcast content cannot, by definition, be prefetched; broadcast content is not available to a user until after it is broadcast. Thus, Nash does not teach *detecting a current display window* and *prefetching content in response to detecting the current display window.* Accordingly, neither Janik, Nash nor their combination teach detecting a current display window according to the present invention. Further, neither Janik, Nash nor their combination teach prefetching at least one audio/visual content in response to the current display window, the preference and the use pattern.

In contrast to the teachings of Janik and Nash, the presently claimed invention is directed to methods and apparatuses of organizing and prefetching audio/visual content ("content") to *minimize the lag time* in making content available to users. [Present Specification, page 2, lines 1-2; page 3, lines 3-8]. An environment within which the methods and apparatuses are implemented comprises a network, a server coupled to the network, and a plurality of clients coupled to the network. [Present Specification, Fig. 1; page 5, lines 16-22]. The clients and the server each have a processor, memory, a network interface, a user interface, and one or more applications. [Present Specification, page 6, lines 1-16]. A system within the presently claimed invention is able to be either a client or a server. [Present Specification, page 7, lines 16-22]. A system includes applications, and the applications include a *prefetch buffer* for *storing the content that is prefetched for use by the user.* [Present Specification, Fig. 6; page 8, lines 1-16]. Importantly, *prefetching* in the presently claimed invention means to prefetch the relevant content and place it into a buffer in an application such that the content is available to the user as quickly as possible, thereby reducing the lag time in making content available to the user. [Present Specification, Fig. 6]. Content is able to be prefetched based on the user choosing a current display window for viewing, the user scrolling through subsequent windows. "As the user scrolls through the various display windows, the *prefetched* audio/visual content dynamically changes." [Present Specification, page 17, lines 5-17]. Other user preferences for prefetching content include prefetching by genre [Present Specification, page 14, lines 7-10], by preferences stored within a content list [Present Specification, page 13, lines 10-19], and by content most frequently accessed by a user [Present Specification, page 8, line 17-22; page 9, lines 12-15]. Frequency of access of specific content, frequency of selection of a genre of content, frequency of selection from specific content lists, selecting a genre for previewing, scrolling through content lists within a genre are all examples of a use pattern.

Janik, Nash and their combination do not teach prefetching at least one audio visual content *in response to the user selecting a current display window.* As noted within the Office Action, Janik teaches a scheduled retrieval of content. As discussed above, in Janik the client boots at a scheduled time and dials up the ISP to download content, then shuts down. As also discussed above, Nash cannot prefetch its broadcast content. As further discussed above, the presently claimed invention is directed to *minimizing lag time* in delivery of content to a user. For example, when a user selects a window containing a content listing, selecting the window is one indication of a user preference for the content listed in the window. Selecting the window makes the window the *current window*, triggering prefetching of the content, thereby minimizing the lag time in delivering that content to the user. Janik, Nash, and their combination do not

teach prefetching at least one audio/visual content in response to the user selecting a current display window.

There is no motivation to warrant the combination of Janik and Nash. There is no hint, teaching or suggestion in either of Janik and Nash to warrant their combination.

This is a classic case of impermissibly using hindsight to make a rejection based on obviousness. The Court of Appeals for the Federal Circuit has stated that "it is impermissible to use the claimed invention as an instruction manual or 'template' to piece together the teachings of the prior art so that the claimed invention is rendered obvious." In Re Fritch, 972 F.2d, 1260, 1266, 23 USPQ2d 1780, 1784 (Fed. Cir. 1992). As discussed above, neither Janik, Nash nor their combination teach detecting a current display window according to the presently claimed invention. Further, neither Janik, Nash nor their combination teach prefetching at least one audio/visual content in response to the current display window, the preference and the use pattern, as claimed. Within the Office Action, it is recognized that Janik does not teach identifying a user pattern corresponding to a user or prefetching content in response to the user pattern. Within the Office Action, it is stated that

> it would have been obvious to one of ordinary skill in the art to have included the use pattern of Nash with the teaching of Janik. [Office Action, page 4]

It is only with the benefit of the present claims, as a "template" that there is any motivation to combine Janik with Nash. No such motivation can be found in the teachings of either of the references. To conclude that the combination of Janik and Nash is obvious, based on the teachings of these references, is to use hindsight based on the teachings of the present invention and to read much more into Janik and Nash than their actual teachings. This is simply not permissible based on the directive from the Court of Appeals for the Federal Circuit.

It is well settled that to establish a *prima facie* case of obviousness, three basic criteria must be met:

1) there must be some suggestion or motivation, either in the references themselves or in the knowledge generally available to one of ordinary skill in the art, to modify the reference or to combine reference teachings;

2) there must be a reasonable expectation of success; and

3) the prior art reference, or references, must teach or suggest all the claim limitations. MPEP § 2143.

The burden of establishing a *prima facie* case of obviousness based on the teachings of Janik and Nash has not been met within the Office Action.

There is no motivation to combine the teachings of Janik and Nash. Janik relates to providing content, management, and interactivity for thin client devices. Nash teaches determining television advertisements to present to a viewer. There is no hint, teaching or suggestion in Janik and Nash to motivate one skilled in the art to combine their teachings. It is only with the benefit of the presently claimed invention as a "template" that one would consider combining Janik and Nash.

Even if considered proper, the combination of Janik and Nash does not teach detecting a current display window according to the presently claimed invention. Further, neither Janik, Nash nor their combination teach prefetching at least one audio/visual content in response to the current display window, the preference and the use pattern.

Furthermore, non-analogous art is being cited to form the basis of the rejection over Janik in view of Nash. The Applicant's presently claimed invention relates to organizing and prefetching audio/visual content in systems according to a current display window, preference and use pattern. On the other hand, Nash relates to determining television advertisements of interest to a viewer base on information entered by the viewer or information derived from monitoring the viewing habits of the viewer. "In order to rely on a reference as a basis for rejection of an applicant's invention, the reference must either be in the field of Applicant's endeavor or, if not, then be reasonably pertinent to the particular problem with which the inventor was concerned." *In re Oetiker*, 977 F.2d 1443, 1446, 24 USPQ2d 1443, 1445 (Fed. Cir. 1992). Determining television advertisements to present to a viewer is clearly not in the same field as organizing and prefetching audio/visual content in systems according to a current display window, preference and use pattern. Furthermore, determining television advertisements to present to a viewer is not reasonably pertinent to the problem of finding and accessing specific audio/visual content and making available to the user while minimizing lag time. Without using the benefit of hindsight, it would not have been obvious to a person having ordinary skill in the relevant art to look to television apparatus and advertising industry to find ideas to improve upon then known methods of organizing and prefetching audio/visual content in systems according to a current display window, preference and use pattern.

Response to Arguments

Within the Office Action, it is stated that the limitations "detecting a current display window", "prefetching at least one audio/visual content in response to the current display window, the preference and the user pattern", "identifying a use pattern", and "detecting an activity" fail to comply with 37 C.F.R. 1.111(b) because they amount to a general allegation that

the claims define a patentable invention without specifically pointing out how the language of the claims patentably distinguishes them from the references. The Applicants respectfully disagree.

"Detecting a current display window" is a limitation not taught by the teachings of Janik and Nash. As discussed above, Nash cannot prefetch its broadcast content. Prefetching content is relevant to Janik, but differs from the presently claimed invention in that Janik teaches scheduled retrieval of content from the Internet at a specific time. In Janik, the scheduled retrieval is completely automated, without user interaction. At the scheduled time, the client boots up from its power-off or sleep-state and dials an ISP to retrieve content, then shuts back down. [Janik, ¶¶ 0192,0193]. As discussed above, the presently claimed invention prefetches content into an application buffer *in response to detecting a current display window.* The presently claimed invention is patentably distinguishable over Janik, Nash, and their combination at least based on the combination of *detecting a current display window,* and *prefetching at least one audio/visual content in response to the current display window.*

Within the Office Action, it is stated that the combination of Janik and Nash is not improper because both references seek to improve selection of content that is relevant to a user, and that the motivation to combine the references is to improve relevancy of the content that is retrieved as an end result. The Applicants respectfully disagree.

Janik teaches methods and apparatus to optimize wide area network bandwidth when delivering Internet content and other digital content to multiple clients by caching requested content in a local media cache. Nash teaches methods of inserting advertising information into a broadcast stream to target advertising to a specific viewer. The stated motivation to combine is not present; Janik and Nash are not analogous art. Further, even if the combination of Janik and Nash were proper, for at least the reasons stated above, Janik, Nash and their combination do not teach or make obvious the presently claimed invention.

Claim 1

The independent Claim 1 is directed to a method comprising identifying a preference and a use pattern corresponding to a user, detecting a current display window, prefetching at least one audio/visual content in response to the current display window, the preference and the use pattern, and setting a prefetch parameter for a frequency of prefetching in response to the preference. As described above, the combination of Janik and Nash is improper. As also described above, Janik, Nash and their combination do not teach detecting a current display window. As further described above, Janik, Nash, and their combination do not teach prefetching at least one audio/visual content *in response to the current display window, the*

preference and the use pattern. For at least these reasons, the independent Claim 1 is allowable over the teachings of Janik, Nash, and their combination.

Claims 2, 4-11, 28, and 29 are all dependent on the independent Claim 1. As described above, the independent Claim 1 is allowable over the teachings of Janik, Nash, and their combination. Accordingly, Claims 2, 4-11, 28, and 29 are all also allowable as being dependent on an allowable base claim.

Claim 12

The independent Claim 12 is directed to an electronic device-implemented system comprising means for identifying a preference and a use pattern, means for organizing audio/visual content using a parameter, means for detecting a current display window being displayed on a display, means for prefetching at least one audio/visual content from a memory device in response to the current display window, the preference and the use pattern, and means for setting a prefetch parameter for a frequency of prefetching in response to the preference. As described above, the combination of Janik and Nash is improper. As also described above, Janik, Nash and their combination do not teach detecting a current display window. As further described above, Janik, Nash, and their combination do not teach prefetching at least one audio/visual content *in response to the current display window, the preference and the use pattern.* For at least these reasons, the independent Claim 12 is allowable over the teachings of Janik, Nash, and their combination.

Claim 13

The independent Claim 13 is directed to a method comprising detecting an activity, setting a prefetch parameter based on the detected activity, wherein the prefetch parameter includes a frequency of prefetching, detecting a current display window, and prefetching a content item based on the prefetch parameter, the current display window and a use pattern. As described above, the combination of Janik and Nash is improper. As also described above, Janik, Nash and their combination do not teach detecting a current display window. As further described above, Janik, Nash, and their combination do not teach prefetching a content item *based on the prefetch parameter, the current display window and a use pattern.* For at least these reasons, the independent Claim 13 is allowable over the teachings of Janik, Nash, and their combination.

Claims 14 and 16-22 are all dependent on the independent Claim 13. As described above, the independent Claim 13 is allowable over the teachings of Janik, Nash, and their

combination. Accordingly, Claims 14 and 16-22 are all also allowable as being dependent on an allowable base claim.

Claim 23

The independent Claim 23 is directed to an electronic device-implemented system comprising a media container configured for storing an audio/visual content item, a prefetch buffer configured for temporarily storing a prefetched audio/visual content item within a memory device and a presentation layer configured for transmitting the prefetched audio/visual content item to the prefetch buffer based on a user's preference, a current display window and a use pattern, wherein the presentation layer transmits the prefetched audio/visual content item based on a preset frequency of prefetching and further wherein the current display window is displayed on a display. As described above, the combination of Janik and Nash is improper. As also described above, Janik, Nash, and their combination do not teach prefetching an audio/visual content item to the prefetch buffer based on a user's preference, a current display window and a use pattern. For at least these reasons, the independent Claim 23 is allowable over the teachings of Janik, Nash, and their combination.

Claims 24 and 25 are both dependent on the independent Claim 23. As described above, the independent Claim 23 is allowable over the teachings of Janik, Nash, and their combination. Accordingly, Claims 24 and 25 are both also allowable as being dependent on an allowable base claim.

Claim 27

The independent Claim 27 is directed to a method comprising detecting an activity, setting a prefetch parameter based on the detected activity, wherein the prefetch parameter includes a frequency of prefetching, detecting a current display window, and prefetching a content item based on the prefetch parameter, the current display window and a use pattern at any time and in response to the detected activity. As described above, the combination of Janik and Nash is improper. As also described above, Janik, Nash and their combination do not teach detecting a current display window. As further described above, Janik, Nash, and their combination do not teach prefetching a content item based on the prefetch parameter, the current display window and a use pattern. For at least these reasons, the independent Claim 27 is allowable over the teachings of Janik, Nash, and their combination.

For the reasons given above, the applicant respectfully submits that the claims are now in a condition for allowance, and allowance at an early date would be appreciated. Should the Examiner have any questions or comments, they are encouraged to call the undersigned at (408) 530-9700 to discuss the same so that any outstanding issues can be expeditiously resolved.

Respectfully submitted,

HAVERSTOCK & OWENS LLP

Dated: September 9, 2009   By: /Jonathan O. Owens/

Jonathan O. Owens
Reg. No. 37,902
Attorneys for Applicant(s)